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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman

WILLIAM A. MUNDELL  
Commissioner

MARC SPITZER  
Commissioner

MIKE GLEASON  
Commissioner

KRISTIN K. MAYES  
Commissioner

AZ CORP COMMISSION  
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In the Matter of the Application of  
Arizona Water Company for an  
Extension of its Existing Certificate  
Of Convenience and Necessity

Docket No: W-01445A-05-0469

EXCEPTIONS OF THE CITY OF ELOY

The City of Eloy ("Eloy"), respectfully takes exception to portions of the Recommended Opinion and Order ("ROO") issued on January 31, 2006. Specifically, Eloy takes exception to that portion of the ROO granting Arizona Water Company a CC&N for Parcel 3, and an order preliminary for Parcel 8. Parcel 8 is within Eloy's city limits. Parcel 3 is immediately contiguous to Eloy's city limits and within Eloy's planning area and proposed service expansion. Eloy, through its municipal water company, plans to serve both parcels and will be able to serve both parcels in a timely fashion. The ROO will have the effect of forcing Eloy to incur additional cost on behalf of its citizens because Arizona Water Company will maintain that the certificate is a property right that

1 the citizens of Eloy must purchase in order for the Eloy municipal water company to serve  
2 those parcels.

3 **PARCEL 3**

4 As testified to by Mr. Doug Olson, Manager of the Eloy Water/Wastewater System,  
5 Eloy intends and has the ability to provide service to Parcel 3. Parcel 3 is near property  
6 Eloy is currently serving and contiguous to property that Eloy is in the process of building  
7 facilities to serve. The City has a water main within a few hundred feet of Parcel 3, and a  
8 well is currently being constructed on the southeast corner of the parcel immediately north  
9 of Parcel 3. Eloy filed as Exhibit 2 to the prefiled testimony of Mr. Olson a planning area  
10 map showing that Parcel 3 is within Eloy's existing planned management area.

11 Parcel 3 contains approximately 618 acres of undeveloped farm land. There are no  
12 immediate plans to develop the property and no immediate need for service. In fact,  
13 Arizona Water Company in its application represented that there would be no new  
14 customers within the next year and only 25 customers within five years.

15 The ROO acknowledges that Eloy's concern about cost to taxpayers is reasonable  
16 but still recommends that Arizona Water Company provide service. The Commission  
17 should not grant an extension to a private water company well in advance of any need for  
18 service in an undeveloped area when an existing municipal water company is contiguous  
19 to the area and plans to expand and serve that area.

20 **PARCEL 8**

21 Parcel 8 presents an even more compelling case that a certificate should not be  
22 granted to Arizona Water Company. Parcel 8 is within Eloy's city limits and surrounded  
23 by a planned development, the Eloy Valley development. As testified to by Mr. Olson,  
24 the Eloy Valley development is approximately 4500 acres with potentially 12,000 homes.  
25 Eloy is working with the developer to build a water infrastructure including new wells,  
26 water lines, reservoirs and pump houses that can easily be converted to serve Parcel 8.

1 Arizona Water Company's application indicates that no new customers will be  
2 within this parcel within the first five years and that, at buildout, there will only be about  
3 20 customers. Mr. Olson testified that the landowner has merely started the planning and  
4 platting process. Mr. Olson further testified that Eloy will be able to meet the developer's  
5 timing needs.


6 Arizona Water Company does not have a license, easement or franchise to serve  
7 within the Eloy city limits. The ROO acknowledges that Arizona Water Company needs  
8 Eloy's consent and that Eloy opposes Arizona Water Company's application.  
9 Nevertheless, the ROO grants an order preliminary. However, an order preliminary may  
10 also grant a property right or, at least, Arizona Water Company may argue as much (*See*  
11 *Paradise Valley Water Co. v. ACC*, 92 Ariz. 391). As a result, even an order preliminary  
12 might require condemnation or at least litigation at the expense of the taxpayers. The  
13 Commission should not authorize Arizona Water Company to provide service to a very  
14 small parcel in the midst of Eloy's municipal area while Eloy serves the surrounding  
15 parcels.

16 **CONCLUSION**

17 Eloy respectfully requests that the ROO be modified to deny Arizona Water  
18 Company's request for a CC&N for Parcels 3 and 8.

19 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day February, 2006.

20 LEWIS AND ROCA

21  
22  for  
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Attorneys for the City of Eloy

1 ORIGINAL and thirteen (13) copies  
2 of the foregoing filed this 9<sup>th</sup> day of  
3 February, 2006, with:

4 Arizona Corporation Commission  
5 Docket Control – Utilities Division  
6 1200 W. Washington Street  
7 Phoenix, Arizona 85007

8 COPY of the foregoing hand-delivered  
9 this 9<sup>th</sup> day of February, 2006, to:

10 David Ronald  
11 Legal Division  
12 Arizona Corporation Commission  
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14 Phoenix, Arizona 85007

15 Ernest Johnson, Director  
16 Utilities Division  
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19 Phoenix, Arizona 85007

20 COPY of the foregoing mailed this  
21 9<sup>th</sup> day of February, 2006, to:

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